

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM NOTICE OF PROPOSED REGULATORY ACTIONS

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to adopt Article 7, section 585, in Chapter 2, Subchapter 1 of Title 2 of the California Code of Regulations. This proposed regulatory action would establish criteria for reviewing requests for new forms of optional settlement 4 subject to Board approval.

II. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on December 22, 2003. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via facsimile at (916) 326-3379; e-mail at joe_parilo@calpers.ca.gov; or mailed to the following address:

Joe Parilo, Regulations Coordinator
California Public Employees' Retirement System
400 P Street, Room 1120
P.O. Box 942702
Sacramento, California 94229-2702

Telephone: (916) 326-3484

III. AUTHORITY AND REFERENCE

The CalPERS Board of Administration (Board) has general authority to take regulatory action under Government Code section 20121. This action would interpret and make specific Government Code section 21458.

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Government Code section 21458 permits a CalPERS member of the defined benefit plan to customize the distribution of his or her retirement allowance under an Option Settlement 4 (Option 4), provided the distribution results in a benefit

that is the actuarial equivalent of the member's retirement allowance and is approved by the Board. This section has been in the Government Code since its enactment in 1931 and was amended in 1953 to impose a limitation on the amount that could be allocated to a beneficiary under Option 4. To date, seven (7) different forms of Option 4 have been approved.

The proposed regulatory action specifies criteria to be used when reviewing any request for a new form of Option 4.

V. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to public employee retirement.

VI. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action does not impose a mandate on local agencies or school districts.
- B. COST OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action does not impact costs or savings for any state agency.
- C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500 et seq.
- D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.
- E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.
- F. ADVERSE ECONOMIC IMPACT: CalPERS has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of businesses in California to compete with businesses in other states.
- G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no significant effect on housing costs.

VII. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

VIII. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Chris Nishioka
Chief, Benefit Services Division
California Public Employees' Retirement System
P.O. Box 942711
Sacramento, California 94229-2711

Telephone: (888) CalPERS (225-7377)

Please direct requests concerning processing of this regulatory action to Joe Parilo, Regulations Coordinator, at the address shown above, or Marilyn Clark at (916) 326-3007.

IX. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation as amended, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons (FSOR) can be obtained, once it has been prepared, by written request to Joe Parilo, Regulations Coordinator, at the address shown above.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' web site at www.calpers.ca.gov under "Members/About CalPERS/Proposed Regulatory Actions."

X. PUBLIC HEARING

The Board has not scheduled a hearing, however, any interested person, or his or her duly authorized representative, may request a public hearing pursuant to Government Code section 11346.8. The request must be in writing and must be submitted to the Regulations Coordinator, at the address shown above, no later than 15 days prior to the close of the written comment period.

XI. ACCESS TO HEARING ROOM

If a hearing is scheduled, the hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed text of the regulations as amended after the public comment period has closed. It may further amend section 585 if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action. If a public hearing is held, the modified text will also be mailed to all persons who submitted oral or written comments at the hearing.

PROPOSED REGULATORY ACTION BY CalPERS
Adoption of Title 2, Chapter 2, Subchapter 1, Article 7

Article 7. Benefits

§585. Retirement Optional Settlement 4

(a) For purposes of any request for a new form of optional settlement 4 subject to the approval of the board, the request must comply with applicable federal and state requirements and the following administrative requirements. If staff determines a request for a new option 4 allowance type should be denied based upon administrative criteria, staff will bring the request before the board to either approve or deny the request.

- (1) There is no existing option or option 4 type that could be used to accomplish substantially the same results.
- (2) Each beneficiary would receive a minimum of 25% of the member's monthly allowance. This minimum would not apply in the case of a community property interest.
- (3) Each beneficiary is alive and named at the time of the designation.
- (4) Upon the death of a beneficiary, there would be no continuing allowance to a secondary or contingent beneficiary.
- (5) Any proposed change in future allowance payment to the retired annuitant or named beneficiary is based upon an easily identifiable event, such as a specified date or death of the retired annuitant.
- (6) The requested annuity is a combination of life annuities, joint life annuities (on no more than two lives), a temporary life annuity, an annuity certain, or lump sums payable upon the death of the member or a beneficiary.
- (7) The total of all lump sums payable upon death cannot exceed the amount of the member's contributions with interest at the time of retirement.
- (8) The total amount (excluding lump sums payable upon death) payable in any month cannot exceed three times the amount that would have been payable for that month if the member had elected an unreduced allowance and was alive in the month.
- (9) It is reasonable to expect that at least 100 members will elect the option within two years of the date that the option first becomes available.

(b) The Board may, in its discretion, establish a review period for any approved option 4 allowance type to monitor conformity with the standards in subsection (a) and may, on a prospective basis, terminate any current or added option 4 allowance type in subsection (c) that does not conform to those standards.

(c) The following alternative forms of option 4 allowance have been approved by the Board. However, the amount to be paid to the beneficiary cannot be more than what the member could provide the beneficiary under option 2W.

(1) “Specific Dollar Amount to a Beneficiary”

The member may specify that upon his or her death after retirement, a monthly allowance in an amount determined by the member be paid to a named beneficiary for life.

(2) “Specific Percentage to a Beneficiary”

The member may specify that upon his or her death after retirement, a monthly allowance in an amount equivalent to a specified percentage of the member’s unmodified allowance be paid to a named beneficiary for life. Or, a member may specify that upon the death of either the member or named beneficiary, the survivor would receive a certain percentage of the member’s unmodified allowance.

(3) “Option 2W and Option 1 Combined”

The member may specify that the same monthly allowance the member is receiving continue to be paid to his or her named beneficiary upon the member’s death and that upon the subsequent death of the named beneficiary, any member contributions not used to fund the allowance be paid in a lump sum to a secondary beneficiary or beneficiaries.

(4) “Reduced Allowance for Fixed Period of Time”

The member may specify a percentage of his or her unmodified allowance to be received for a fixed period of time immediately following retirement. At the end of the specified period, the member begins to receive an increased allowance that is the actuarial equivalent of his or her remaining benefit. The allowance may be based on the member’s life alone or on the joint lifetimes of the member and a named beneficiary.

(5) “Multiple Lifetime Beneficiaries”

The member may name more than one beneficiary to receive a lifetime monthly allowance following the death of the member after retirement.

(6) “Option 3W and Option 1 Combined”

The member may specify that one-half of the monthly allowance the member is receiving continue to be paid to his or her named beneficiary upon the member’s death and that upon the subsequent death of the named beneficiary, any member contributions not used to fund the allowance be paid in a lump sum to a secondary beneficiary or beneficiaries.

(7) “Reduction upon Death of Retiree or Named Beneficiary”

The member may specify a minimal reduction of at least one dollar to the unmodified allowance to provide the highest allowance possible while both the member and beneficiary are living. Upon the death of either of them, the continuing allowance will be significantly reduced for the survivor.

NOTE

Authority cited: Section 21458, Gov. Code. Reference: Section 21458, Gov. Code.

INITIAL STATEMENT OF REASONS

Adoption of section 585 – California Public Employees' Retirement System Retirement Benefits

Description of Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address: The Government Code (Section 21458) provides that the CalPERS defined benefit plan offer a member the option to customize the distribution of his or her retirement allowance under an Optional Settlement (Option) 4 subject to approval of the Board of Administration. To protect the California Public Employees' Retirement Fund's funded status and to minimize administrative costs, criteria must be established for the board to review requests for any new form of option 4 for approval or denial.

The optional settlement 4 provision has been in the Government Code since the enactment of the Public Employees' Retirement Law in 1931. In 1953, the law was amended to impose a limitation on the amount that could be allocated to a beneficiary under Option 4 to the amount of Option 2W.

At its October 2003 meeting, the Board approved criteria for staff to evaluate requests for new forms of Option 4 allowances and directed staff to promulgate these as regulations.

Specific Purpose: The regulatory action is intended to adopt section 585 to establish as regulations the criteria for approval or denial of requests for any new form of optional settlement 4.

Necessity: The regulations are necessary to codify the option 4 approval criteria in order to protect the solvency of the Retirement Fund, minimize administrative cost and burden, and ensure consistency in reviewing member requests.

Technical, Theoretical and/or Empirical Studies, Reports or Documents: Not applicable.

Alternatives to the Regulatory Action and CalPERS' Reasons for Rejecting Those Alternatives: CalPERS has considered alternatives to this proposal and has determined that there is no more effective way to carry out its purpose that would be less burdensome.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses: The proposed action has no cost impact either on small businesses or on persons in the private sector as it applies only to public employee retirement benefits.